

16 Roads

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SUBJECT: Valid Existing Rights for Haulroads

DATE: September 25, 1998

This document is to clarify and provide guidance on the definition of Valid Existing Rights (VER) for haulroads. The WV Surface Mining Regulations §38-2-2.130 state ...”For haulroads, valid existing rights means a road or recorded right-of-way or easement for a road which was in existence prior to August 3, 1977.”

If a right-of-way or easement existed prior to August 3, 1977, existing rights apply to that right-of-way or easement width regardless of the existing road width or even if no road was ever built.

If no right-of-way or easement existed prior to August 3, 1977, but a road can be proven to have been in existence prior to August 3, 1977, then VER exists. The applicant can only bond the existing road and ditchline. The road can not be widened without a waiver being obtained from the owner of the dwelling within 300 feet.

Existing means existing on August 3, 1977. Waivers are not acceptable for public buildings, schools, churches, community or institutional buildings, public parks or cemeteries.

SUBJECT: Internal Primary Roads

DATE: March 18, 1993

The West Virginia Surface Mining Reclamation Regulations at 38-2-2.58 provide a definition for a haulageway or access road. However, ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas are excluded from this definition. Furthermore, the Regulations at 38-2-4.1 classify each road, as defined in subsection 2.58, as either a primary road or an infrequently used access road.

Confusion has arisen of late regarding the definition of “immediate mining area” and when a road is classified as “primary”. Immediate mining area, as envisioned by 38-2-2.58 of the Regulations and reinforced by federal register language, refers to the area where coal is being removed from the seam and to other areas that should not be subject to the performance standards for roads because they are subject to frequent surface changes. These other areas may include areas where topsoil and overburden are being moved and areas undergoing active reclamation. Utilizing this as a basis, any road which is not within the immediate mining area and will be in place and in use for six months or longer, will be classed as a primary road.

As a result, these internal primary roads must meet performance standards and be certified in accordance with 38-2-4.13 of the Regulations. A design must be contained in the permit which provides sufficient detail that assures performance standards will be met. This design should include and may be limited to a typical cross section and a narrative which addresses the surfacing material, a water management plan which assures that drainage from the mined area flows to the proper sediment control structure, and that the road will be properly constructed, maintained, and certified. However, site specific conditions may require that additional criteria be included in the design. It is realized that most of these roads are constructed in areas where drainage from the road is treated by sediment control structures designed and constructed for the mined area, so sediment control should not be a factor in these designs. The focus of these designs should be on proper surfacing, slope, grade, and drainage conveyance to ensure performance standards can be adhered to.

Certifications for these internal primary roads should include a profile, plan view, and appropriate cross sections. This information would then show that the road is built in accordance with the approved plan, except as otherwise noted in the certification statement.

Please ensure that all future permit applications include plans which comply with these requirements. Furthermore, for existing permits that do not contain plans which

adequately comply with these requirements, an application for permit revision, to include a road design as review, permit renewal, or if violations of associated performance standards arise, whichever should occur first.

NOTE: This policy is also in the I &E Handbook, Series 4.

<i>SUBJECT:</i>	Delta Routes
<i>DATE:</i>	October 1991

A delta road is a road shown on Department of Highway county road maps as being maintained but not owned by the state.

All roads shown on the Department of Highway county road maps as being delta routes are to be bonded by the permit. The operator must provide proof of legal right to conduct mining operations on these roads in the permit application.

SUBJECT: One Hundred Feet of Highway Variance

DATE: December 2, 1999

Chapter 22-3-22(d)(3) states “Within one hundred feet of the outside right-of-way line on any public road, except where mine access roads or haulage roads join such right-of-way line, and except that the Secretary may permit the roads to be relocated or the area affected to lie within one hundred feet of the road if, after public notice and an opportunity for a public hearing in the locality, the Secretary makes a written finding that the interests of the public and the landowners affected thereby will be protected;”

As part of section C-7a of the surface mining application, the company must submit justification for having proposed the operation within 100 feet of the outside right-of-way of a public road and demonstrate how the public and landowner affected will be protected.

OMR staff will review the justification and plans to insure that the public and landowner protection is addressed. Findings will be documented using the approved Waiver or Variance Approval section of the DMM-2A.